APPENDIX B

Laws, Regulations, and Executive Orders

BLM must comply with the mandate and intent of the following federal laws (and any applicable regulations) and EOs that apply to BLM-administered lands and resources in the Planning Area.

Air

A. Clean Air Act, 42 USC 7401 et seq.

The primary objective of the CAA is to establish federal standards for various pollutants from both stationary and mobile sources and to provide for the regulation of polluting emissions via state implementation plans. In addition, the amendments are designed to prevent significant deterioration in certain areas where air quality exceeds national standards, and to provide for improved air quality in areas which do not meet federal standards (non-attainment areas).

Federal facilities are required to comply with air quality standards to the same extent as nongovernmental entities. Part C of the 1977 amendments stipulates requirements to prevent significant deterioration of air quality and, in particular, to preserve air quality in national parks, national wilderness areas, national monuments and national seashores.

The amendments establish Class I, II and III areas, where emissions of particulate matter and sulfur dioxide are to be restricted. The restrictions are most severe in Class I areas and are progressively more lenient in Class II and III areas.

Mandatory Class I federal lands include all national wilderness areas exceeding 500 acres. Federal land managers are charged with direct responsibility to protect the air quality and related values (including visibility) of Class I lands and to consider, in consultation with EPA, whether proposed facilities will have an adverse impact on these values.

Native American Tribes

A. American Indian Religious Freedom Act, 42 USC 1996

This act recognizes that freedom of religion for all people is an inherent right and that traditional American Indian religions are an indispensable and irreplaceable part of Indian life. Establishing federal policy to protect and preserve the inherent right of

religious freedom for Native Americans, this act requires federal agencies evaluate their actions and policies to determine if changes should be made to protect and preserve the religious cultural rights and practices of Native Americans. Such evaluations are made in consultation with native traditional religious leaders.

B. Consultation and Coordination with Indian Tribal Governments, EO 13175, November 6, 2000

In formulating or implementing policies that have tribal implications, agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the federal government and Indian tribal governments.

C. Indian Sacred Sites, EO 13007, May 24, 1996

In managing federal lands, agencies shall, to the extent practicable, permitted by law, and not inconsistent with agency functions, accommodate Indian religious practitioners' access to and ceremonial use of Indian sacred sites. Agencies are to avoid adversely affecting the physical integrity of these sites, maintaining the confidentiality of such sites, and informing tribes of any proposed actions that could restrict access to, ceremonial use of, or adversely affect the physical integrity of, sacred sites.

D. Native American Graves Protection and Repatriation Act, 25 USC 3001-13

This act establishes requirements for the treatment of Native American human remains and sacred or cultural objects found on federal land.

In any case where such items can be associated with specific Tribes or groups of Tribes, the agency is required to provide notice of the item in question to the Tribe or Tribes. Upon request, each agency is required to return any such item to any lineal descendant or specific Tribe with whom such item is associated. There are various additional requirements imposed upon the Secretary.

E. Religious Freedom Restoration Act, 42 USC 2000bb

This act is aimed at preventing laws which substantially burden a person's free exercise of their religion. The Religious Freedom Restoration Act reinstated the Sherbert Test, mandating that strict scrutiny be used when determining if the Free Exercise Clause of the First Amendment to the U.S. Constitution, guaranteeing religious freedom, has been violated. In this, the courts must first determine whether a person has a claim involving a

sincere religious belief, and whether government action has a substantial burden on the person's ability to act on that belief. If these two elements are established, then the government must prove that it is acting in furtherance of a compelling state interest, and that it has pursued that interest in the manner least restrictive, or least burdensome, to religion.

Antiquities/Archaeology

A. Antiquities Act, 16 USC 431–433

This act authorizes the President to designate as National Monuments objects or areas of historic or scientific interest on lands owned or controlled by the United States. The act required that a permit be obtained for examination of ruins, excavation of archaeological sites and the gathering of objects of antiquity on lands under the jurisdiction of the Secretaries of Interior, Agriculture, and Army, and provided penalties for violations.

B. Archeological and Historic Preservation Act, 16 USC 469–469c

This law was enacted to carry out the policy established by the Historic Sites Act, directed federal agencies to notify the Secretary of the Interior whenever they find a federal or federally assisted, licensed or permitted project may cause loss or destruction of significant scientific, prehistoric or archaeological data. The act authorized use of appropriated, donated and/or transferred funds for the recovery, protection and preservation of such data.

C. Archaeological Resources Protection Act, 16 USC 470aa–470ll

This act largely supplanted the resource protection provisions of the Antiquities Act for archaeological items. It established detailed requirements for issuance of permits for any excavation for or removal of archaeological resources from federal or Indian lands. It also established civil and criminal penalties for the unauthorized excavation, removal, or damage of any such resources; for any trafficking in such resources removed from federal or Indian land in violation of any provision of federal law; and for interstate and foreign commerce in such resources acquired, transported or received in violation of any state or local law.

D. Historic Sites, Buildings and Antiquities Act, 16 USC 461–462, 464–467

This act declared it a national policy to preserve historic sites and objects of national significance. It provided procedures for designation, acquisition, administration and protection of such sites. Among other things, National Historic and Natural Landmarks are designated under authority of this act.

E. National Historic Preservation Act, 16 USC 470 et seq.

This act provided for preservation of significant historical features (buildings, objects and sites) through a grant-in-aid program to the states. It established the NRHP and a program of matching grants under the existing National Trust for Historic Preservation. The act established an Advisory Council on Historic Preservation, which was made a permanent independent agency in1976. Federal agencies are directed to take into account the effects of their actions on items or sites listed or eligible for listing in the NRHP.

F. Preserve America, EO 13287, March 3, 2003

Agencies shall provide leadership in preserving America's heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the federal government.

Each agency is to provide and maintain an assessment of the status of its inventory of historic properties and their ability to contribute to community economic development initiatives.

Where consistent with its mission and governing authorities, and where appropriate, agencies shall seek partnerships with state and local governments, Indian tribes, and the private sector to promote the unique cultural heritage of communities and of the nation and to realize the economic benefit that these properties can provide; and cooperate with communities to increase opportunities for public benefit from, and access to, federally owned historic properties.

G. Protection and Enhancement of Cultural Environment, EO 11593, May 13, 1971

Federal agencies are to provide leadership in the preservation, restoration, and maintenance of the historic and cultural environment. Agencies are to locate and evaluate all federal sites under their jurisdiction or control which may qualify for listing on the NRHP or sites that qualify. Agencies are to initiate procedures to maintain such

federally owned sites. The Advisory Council on Historic Preservation must be allowed to comment on the alteration, demolition, sale, or transfer of property which is likely to meet the criteria for listing as determined in consultation with the SHPO.

Environment—General

A. Environmental Quality Improvement, Act 42 USC 4371 et seq.

Ensures each federal agency conducting or supporting public works activities affecting the environment implements policies established under existing law principally by establishing the Office of Environmental Quality to provide assistance to, and oversight of, federal agencies.

B. Federal Land Policy and Management Act, 43 USC 1701 et seq.

The "Organic Act" for the BLM, this act provides for the inventory and planning of the public lands to ensure that these lands are managed in accordance with the intent of Congress under the principles of multiple use and sustained yield. The lands are to be managed in a manner that protects the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values that, where appropriate, will preserve and protect certain public lands in their natural conditions, that will provide food and habitat for fish and wildlife and domestic animals, and that will provide for outdoor recreation and human occupancy and use by encouraging collaboration and public participation throughout the planning process.

In addition, the public lands must be managed in a manner that recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands. Many old laws were repealed but rights obtained under those laws are protected. New authority for the disposal of appropriate public lands through sale or exchange is provided. ROW granting procedures are provided for both the BLM and the USFS. The regulations contained in 43 CFR Part 1600 govern the BLM planning process.

C. National Environmental Policy Act, 42 USC 4321 et seq.

NEPA encourages productive and enjoyable harmony between man and his environment and promotes efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans; enriches

the understanding of the ecological systems and natural resources important to the nation.

NEPA requires that for recommendations or reports on proposals for legislation and other major actions significantly affecting the quality of the human environment that federal agencies through a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on the human environment; include a detailed statement by the responsible official on: the environmental impact of the proposed action; any adverse environmental effects which cannot be avoided should the proposal be implemented; alternatives to the proposed action; the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

D. Protection and Enhancement of Environmental Quality, EO 11514, March 5, 1970

Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals of protecting and enhancing the quality of the nation's environment to sustain and enrich human life.

Agencies should monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment.

Agencies shall ensure the fullest practicable provision of timely public information and understanding of federal plans and programs with environmental impact in order to obtain the views of interested parties. This will include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action.

E. Federal Action to Address Environmental Justice in Minority Populations and Low-income Populations, EO 12898, February 11, 1994

Agencies shall make achieving environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

Fire

A. Timber Protection Act, 16 USC 594

This act authorizes the Secretary of the Interior to protect timber on lands under the department's jurisdiction from fire, disease and insects

Fish and Wildlife

A. Animal Damage Control Act, 7 USC 426–426c

This act, as amended, gives the Secretary of Agriculture broad authority for investigation, demonstrations and control of mammalian predators, rodents and birds.

B. Bald Eagle Protection Act, 16 USC 668–668d

This law provides for the protection of the bald eagle (the national emblem) and the golden eagle by prohibiting, except under certain specified conditions, the taking, possession and commerce of such birds.

C. Conservation of Migratory Birds, EO 13186, January 10, 2001

EO 13186 creates a more comprehensive strategy for the conservation of migratory birds by the federal government. The order provides a specific framework for the federal government's compliance with its treaty obligations to Canada, Mexico, Russia, and Japan. The order provides broad guidelines on conservation responsibilities and requires the development of more detailed guidance in MOU within two years of its implementation. The order will be coordinated and implemented by the USFWS. The MOU will outline how federal agencies will promote conservation of migratory birds. The order will requires the support of various conservation planning efforts already in progress; incorporation of bird conservation considerations into agency planning, including NEPA analyses; and reporting annually on the level of take of migratory birds.

D. Endangered Species Act, 16 USC 1532 et seq.

This act provides for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend, both through federal action and by encouraging the establishment of state programs. The act: authorizes the determination and listing of species as endangered and threatened; prohibits

unauthorized taking, possession, sale, and transport of endangered species; provides authority to acquire land for the conservation of listed species, using land and water conservation funds; authorizes establishment of cooperative agreements and grants-in-aid to states that establish and maintain active and adequate programs for endangered and threatened wildlife and plants; authorizes the assessment of civil and criminal penalties for violating the act or regulations; and authorizes the payment of rewards to anyone furnishing information leading to arrest and conviction for any violation of the act or any regulation issued there under.

Section 7 of the ESA requires federal agencies to insure that any action authorized, funded or carried out by them is not likely to jeopardize the continued existence of listed species or modify their critical habitat.

E. Exotic Organisms, EO 11987, May 24, 1977

Agencies, to the extent permitted by law, are to: restrict the introduction of exotic species into the natural ecosystems on lands and waters owned or leased by the U.S.; encourage states, local governments, and private citizens to prevent the introduction of exotic species into natural ecosystems of the U.S.; restrict the importation and introduction of exotic species into any natural U.S. ecosystems as a result of activities they undertake, fund, or authorize; and restrict the use of federal funds, programs, or authorities to export native species for introduction into ecosystems outside the U.S. where they do not occur naturally.

F. Migratory Bird Treaty Act of 1918, amended in 1936, 1960, 1968, 1969, 1974, 1978, 1986, and 1989

The Migratory Bird Treaty Act implements treaties and conventions between the U.S., Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Unless otherwise permitted by regulations, the act makes it unlawful to pursue, hunt, take, capture or kill; attempt to take, capture or kill; possess, offer to or sell, barter, purchase, deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not. The act also make it unlawful to ship, transport or carry from one state, territory or district to another, or through a foreign country, any bird, part, nest or egg that was captured, killed, taken, shipped, transported or carried contrary to the laws from where it was obtained; and import from Canada any bird, part, nest or egg obtained contrary to the laws of the province from which it was obtained. The DOI has authority to arrest, with or without a warrant, a person violating the act.

G. Neotropical Migratory Bird Conservation Act, PL 106–247

This act provides grants to countries in Latin America, the Caribbean, and the U.S. for the conservation of neotropical migratory birds that winter south of the border and summer in North America. The law encourages habitat protection, education, researching, monitoring, and capacity building to provide for the long-term protection of neotropical migratory birds.

H. Recreational Fisheries, EO 12962, June 7, 1995

Agencies shall improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities by such activities as: developing and encouraging partnerships between governments and the private sector to advance aquatic resource conservation and enhance recreational fishing opportunities, identifying recreational fishing opportunities that are limited by water quality and habitat degradation and promoting restoration to support viable, healthy, and, where feasible, self-sustaining recreational fisheries, fostering sound aquatic conservation and restoration endeavors to benefit recreational fisheries, supporting outreach programs designed to stimulate angler participation in the conservation and restoration of aquatic systems, and implementing laws under their purview in a manner that will conserve, restore, and enhance aquatic systems that support recreational fisheries.

Land

A. Desert Land Act, 43 USC 321 et seq.

This act allows entry of up to 320 acres of desert land where the entryman intends to reclaim the land for agricultural purposes within three years. Lands must be determined to be available and classified pursuant to 43 USC 315f before such an entry can be allowed.

B. Exchanges of Public Land for Non-federal Land, 43 USC 1716

Allows the exchange of public land, or interests therein, for non-federal lands where it is determined (the Secretary finds) that the public interest will be well served by making the exchange. Values of the disposed and acquired lands must be equal in value.

C. Federal Land Exchange Facilitation Act, 43 USC 1716, August 20, 1988

Amends the exchange provisions of FLPMA to streamline and facilitate land exchange procedures and to expedite exchanges.

D. Federal Land Transaction Facilitation Act, PL 106–248, July 25, 2000

Provides a more expeditious process for disposal and acquisition of land to facilitate a more effective configuration of land ownership patterns.

Funds from the sale of specified land is deposited in a special fund available to acquire land and to process additional land sales.

E. Recreation and Public Purposes Act, 43 USC 869 et seq.

This act provides for the lease or disposal of public lands, and certain withdrawn or reserved lands, to state and local governments and qualified non-profit organizations to be used for recreational or public purposes. Prices that are charged for land use or acquisition are normally less than market value of the specific lands. The act allows for reversion of the lands under certain conditions.

F. Sales of Public Lands, 43 USC 1713

Allows the sale of public lands found suitable for use other than frazing or the production of forage crops that also:

- is difficult and uneconomic to manage, or
- the tract was acquired for a purpose for which the tract is no longer necessary, or
- disposal of the tract will serve important public objectives.

Mining and Mineral Leasing

A. General Mining Law, 30 USC 21 et seq.

This authority sets forth rules and procedures for the exploration, location and patenting of lode, placer, and mill site mining claims. Claimants must file notice of the original

claim with the BLM as well as annual notice of intention to hold, affidavit of assessment work or similar notice.

B. Mining and Mineral Policy Act, 30 USC 21a

This act expressed the national policy to foster and encourage private enterprise in the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs, mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.

C. Stock Raising Homestead Act, 43 USC 291–299

Patents issued under this authority reserved minerals to the U.S. as well as the right to prospect for, mine, and remove said minerals. Certain conditions exist to protect the patentee's improvements.

D. Mineral Leasing Act, 30 USC 181 et seq.

This act authorizes and governs leasing of public lands for development of deposits of coal, oil, gas and other hydrocarbons, sulphur, phosphate, potassium and sodium.

E. Federal Coal Leasing Amendments Act, 30 USC 201

This act made major changes in the way coal leases tracts are established, economic and environmental considerations, sale/leasing procedures, and penalties for violations.

F. Surface Mining Control and Reclamation Act, 30 USC 1201 et seq.

This act establishes a program for the regulation of surface mining activities and the reclamation of coal-mined lands, under the administration of the Office of Surface Mining, Reclamation and Enforcement in the DOI.

The law sets forth minimum uniform requirements for all coal surface mining on federal and state lands, including exploration activities and the surface effects of underground mining. Mine operators are required to minimize disturbances and adverse impact on fish, wildlife and related environmental values and achieve enhancement of such resources where practicable. Restoration of land and water resources is ranked as a priority in reclamation planning.

G. Geothermal Steam Act, 30 USC 1001 et seq.

This act authorizes and governs the lease of geothermal steam and related resources on public lands.

H. Mineral Leasing Act for Acquired Lands, 30 USC 351 et seq.

This act authorizes and governs mineral leasing on acquired lands.

I. Materials Sales Act, 30 USC 601–604

This act provides for the disposal of materials on public lands and requires the Secretary, under such rules and regulations as he may prescribe, may dispose of mineral materials (including but not limited to common varieties of the following: sand, stone, gravel, pumice, pumicite, cinders, and clay) and vegetative materials (including but not limited to yucca, manzanita, mesquite, cactus, and timber or other forest products) on public lands of the United States. Such materials may be disposed of upon the payment of adequate compensation. The Secretary is authorized in his discretion to permit any federal, state, or territorial agency, unit or subdivision, including municipalities, or any association or corporation not organized for profit, to take and remove, without charge, materials and resources for use other than for commercial or industrial purposes or resale.

Pollution—General

A. Comprehensive Environmental Response Compensation and Liability Act (Superfund), 42 USC 9601 et seq.

The Superfund statute was enacted in 1980; major amendments were enacted in 1983 and in 1986. The 1980 statute authorized, through 1985, the collection of taxes on crude oil and petroleum products, certain chemicals, and hazardous wastes. It also established liability to the U.S. government for damage to natural resources over which the U.S. has

sovereign rights and requires the President to designate federal officials to act as trustees for natural resources. Use of Superfund monies to conduct natural resource damage assessments was provided.

The 1983 amendments established a comprehensive system to react to releases of hazardous substances and to determine liability and compensation for those affected. The President is authorized to notify federal and state natural resource trustees of potential damages to natural resources and to coordinate related assessments.

Amendments enacted in 1986 (known as the Superfund Amendment and Reauthorization Act, among others, 1) added effects on natural resources as a criterion for determining facilities to be placed on the National Priorities List, 2) mandated the designation of federal officials to act as trustees for natural resources and to assess damages and injury to, as well as destruction of, or loss of, natural resources, 3) stipulated that Superfund monies may only be used for natural resource damage claims if all administrative and judicial remedies to recover costs from liable parties have been exhausted, 4) clarified that federal facilities are subject to the same cleanup requirements and liability standards as non-governmental entities, and 5) eliminated the authorization for use of Superfund monies to conduct damage assessments.

B. Federal Environmental Pesticide Control Act, 7 USC 136

This act, in simple terms, provided for a program for controlling the sale, distribution, and application of pesticides through an administrative registration process and for classifying pesticides for "general" or "restricted" use. Restricted pesticides may only be applied by or under the direct supervision of a certified applicator

C. Federal Compliance with Pollution Control Standards, EO 12088

To ensure federal compliance with applicable pollution control standards, this executive order provides as follows: 1) the head of each executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to federal facilities and activities under the control of the agency, and 2) the head of each executive agency is responsible for compliance with applicable pollution control standards. Applicable pollution control standards means the same substantive, procedural, and other requirements that would apply to a private person.

D. Superfund Implementation, EO 12580

This EO delegates to various federal officials the responsibilities vested in the President for implementing the CERCLA of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986. This EO and the National Contingency Plan (the implementing regulations of CERCLA) are the basis of DOE's authority to implement CERCLA at DOE facilities. The EO delegates the authority and responsibility to DOE, while the National Contingency Plan describes EPA's procedures for implementing the CERCLA program. DOE is required to carry out a number of key functions, including, providing representatives to the National Response Team, the interagency organization responsible for planning for and responding to CERCLA releases; acting as a natural resource trustee for land that DOE manages; performing natural resource damage assessments; and assuming authority for response actions resulting from releases of hazardous substances on, over, or under land that DOE manages.

E. Federal Compliance with Right to Know Laws and Pollution Prevention Requirements, EO 12856, August 3, 1993

Requires agencies to comply with the provisions of the Pollution Prevention Act and to assure all necessary actions are taken to prevent pollution. The CEQ provided guidance on pollution prevention in the *Federal Register* of January 29, 1993.

F. Resource Conservation and Recovery Act, 42 USC 6901 et seq.

This act regulates the treatment, transportation, storage, and disposal of solid and hazardous wastes. The BLM is required to comply with standards for wastes generated at its facilities. The key provisions include:

- Identification and listing of hazardous waste and standards applicable to hazardous waste. This requires reporting of hazardous waste, permitting for storage, transport, and disposal, and it includes provisions for oil recycling and federal hazardous waste facilities inventories.
- Management for solid waste, including landfills.
- Applicability of federal, state, and local laws to federal agencies.
- Management, replacement, and monitoring of underground storage tanks.

G. Toxic Substances Control Act, 15 USC 2601 et seq.

This act authorized the EPA to obtain data from industry on health and environmental effects of chemical substances and mixtures. If unreasonable risk or injury may occur, EPA may regulate, limit or prohibit the manufacture, processing, commercial distribution, use and disposal of such chemicals and mixtures.

H. Pollution Prevention Act, 42 USC 13101 et seq.

This act encourages manufacturers to avoid the generation of pollution by modifying equipment and processes, redesigning products, substituting raw materials, and making improvements in management techniques, training and inventory control.

I. Solid Waste Disposal Act, 42 USC 6901 et seq.

Establishes a national policy that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment. It directs the EPA to provide guidelines for the treatment, handling, and storage of such wastes.

Rangelands

A. Federal Noxious Weed Act, 7 USC 2801 et seq.

This act provides the Secretary of Agriculture authority to designate plants as noxious weeds by regulation, and prohibits the movement of all such weeds in interstate or foreign commerce except under permit. The Secretary also has authority to inspect, seize and destroy products, and to quarantine areas, if necessary to prevent the spread of such weeds. The Secretary is also authorized to cooperate with other federal, state and local agencies, farmers associations and private individuals in measures to control, eradicate, or prevent or retard the spread of such weeds.

Each federal land-managing agency is to designate an office or person adequately trained in managing undesirable plant species to develop and coordinate a program to control such plants on the agency's land.

B. Invasive Species, EO 13112, February 3, 1999

The purpose is to prevent the introduction of invasive species and provide for their control, as well as to minimize the economic, ecological, and human health impacts that invasive species cause.

Agencies whose actions may affect the status of invasive species shall: (1) identify such actions, (2) use relevant programs and authorities to prevent, control, monitor, and research such species, and (3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere

C. Noxious Plant Control Act, 43 USC 1241–43

Authorizes agencies to allow, and pay for, state authorities to enter federal land for the control/destruction of noxious plants.

Recreation

A. Off-Road Vehicles, EO 11644, February 8, 1972 and EO 11989, May 24, 1977

These orders require public land managers "to establish policies and procedures that will ensure that the use of off-highway vehicles on public lands will be controlled and directed to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands."

B. Federal Lands Recreation Enhancement Act, 16 USC 6801 et seq.

FLREA was enacted by Congress as part of the 2005 Omnibus Appropriations Bill. The act limits fees to sites that have a specified minimum level of development and meet specific criteria. Additional safeguards include provisions that require the use of Recreation Resource Advisory Committees and specific requirements to provide the public with information about fees and how fee revenues will be used. The act provides agencies with recreation fee authority for 10 years, which will allow the agencies to improve the efficiency of the program, provide better facilities and services to the visitors, employ greater use of technology, and enter into more fee management agreements with counties and other entities to provide additional services to visitors.

The act benefits visitors to federal public lands by:

- Providing a consistent, interagency fee program that reduces confusion over differing national fee programs and passes;
- Providing more opportunities for public involvement in determining recreation fee sites and fees levels;
- Providing focused criteria and limits on areas and sites in which recreation fees can be charged;
- Providing a revenue source to enhance visitor services and address the backlog of maintenance needs at recreation facilities;
- Providing more opportunities for cooperation with gateway communities through fee management agreements for visitor and recreation services, emergency medical services and law enforcement services.

Rights-of-Way

With the passage of FLPMA in 1976, BLM was left with existing ROWs ("Pre-FLPMA" ROWs) and three basic authorities under which public lands may be used or dedicated to various types of ROWs.

A. Pre-FLPMA ROWs, 43 USC 1701 Savings Provision

Various laws provided for ROWs ranging from ditches and canals through communications to railroads. Some are indefinite in term and will remain under the pre-FLPMA authority until abandoned. Others have definite terms and will come under current authorities if amended or renewed.

B. Oil and Gas Pipeline ROWs, 30 USC 185

The Mineral Leasing Act of 1920, as amended, contains provisions for the issuance of ROWs for the transportation of natural gas and oil or products derived there from. The term of the ROW is limited to 30 years but is renewable. Where an application involves land administered by two or more federal agencies, the Secretary of the Interior has delegated the decision making to the BLM. Federal agencies are not eligible under this authority.

C. FLPMA ROWs, 43 USC 1761 et seq.

Title V of FLPMA gives the BLM authority to authorize most types of ROW use, other than oil and gas ROWs, on the public lands. The term of the ROW is determined by need and conditions; it may be indefinite but usually is around 30 years. ROWs may be renewed.

D. Federal Aid Highways, 23 USC 317

Where Federal Aid Highways are involved, the Secretary of Transportation may appropriate federal land for such highway projects. Applications or requests are usually filed by the State Department of Transportation through the local office of the FHWA. If BLM does not disapprove such a request within 120 days, the appropriation is automatic. When BLM issues a letter "consenting" to the appropriation reasonable terms and conditions may be included.

E. Energy Supply, Distribution, or Use, EO 13211, May 18, 2001

This order requires an impact and alternative analysis for any proposed rule that would have an adverse impact on energy supply, distribution, or use.

F. Environmental Stewardship and Transportation Infrastructure Project Reviews, EO 13274, September 18, 2002

Agencies shall take appropriate actions, to the extent consistent with applicable law and available resources, to promote environmental stewardship in the nation's transportation system and expedite environmental reviews of high-priority transportation infrastructure projects.

For transportation infrastructure projects, agencies shall, in support of the Department of Transportation, formulate and implement administrative, policy, and procedural mechanisms that enable each agency required by law to conduct environmental reviews with respect to such projects to ensure completion of such reviews in a timely and environmentally responsible manner.

Renewable Energy

A. Action to Expedite Energy Related Projects, EO 13212, May 18, 2001

For energy-related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.

B. Energy Policy Act, PL 109–58

On August 8, 2005, the Energy Policy Act of 2005 (PL 109-58) was signed into law. Section 211 of the act states, "It is the sense of the Congress that the Secretary of the Interior should, before the end of the 10-year period beginning on the date of enactment of this Act, seek to have approved non-hydropower renewable energy projects located on the public lands with a generation capacity of at least 10,000 megawatts of electricity." This act also contains a multitude of provisions covering energy production, distribution, storage, efficiency, conservation, and research. Other topics of note include renewable energy, expansion of the Strategic Petroleum Reserve, fuel production access in federal lands, the ban of drilling in the Great Lakes, electricity reliability, hydrogen vehicles, vehicle efficiency and alternative fuels, ethanol, and motor fuels.

Trails

A. National Parks and Recreation Act of 1978, PL 95–625

This act provides for increases in appropriations ceilings, development ceilings, land acquisition, and boundary changes in certain federal park and recreation areas, and for other purposes. It provides for the establishment of new units of the national park system, numerous boundary changes, and authorization increases for existing units of the national park system, and designated portions of a number of existing national park system areas as wilderness. It also established a new category in the National Trails System labeled National Historic Trails and would designate additional national scenic trails.

B. National Trails System Act, 16 USC 1241–1249

This act provides for establishment of National Recreation Trails (NRTs), National Scenic Trails, and National Historic Trails (NHTs).

NRTs may be established by the Secretaries of Interior or Agriculture on land wholly or partly within their jurisdiction, with the consent of the involved state(s), and other land managing agencies, if any. National Scenic Trails and NHTs may only be designated by an Act of Congress.

Water—General

A. Clean Water Act, PL 95–217

The CWA extensively amended the federal Water Pollution Act. Of particular significance were the following provisions:

- Development of a Best Management Practices Program as part of the state area wide planning program
- Authority for the USACE to issue general permits on a state, regional, or national basis for any category of activities which are similar in nature, will cause only minimal environmental effects when performed separately, and will have only minimal cumulative adverse impact on the environment
- Exemption of various activities from the dredge and fill prohibition including normal farming, silviculture, and ranching activities (33 USC 1344(f))
- Procedures for state assumption of the regulatory program.

The CWA requires the EPA to establish water quality standards for specified contaminants in surface waters and forbids the discharge of pollutants from a point source into navigable waters without a NPDES permit. NPDES permits are issued by EPA or the appropriate state if it has assumed responsibility. Section 404 of the CWA establishes a federal program to regulate the discharge of dredged and fill material into waters of the United States. Section 404 permits are issued by the USACE.

B. Federal Water Pollution Control Act, 33 USC 1251 et seq.

The original 1948 statute, the Water Pollution Control Act, authorized the Surgeon General of the Public Health Service, in cooperation with other federal, state and local entities, to prepare comprehensive programs for eliminating or reducing the pollution of interstate waters and tributaries and improving the sanitary condition of surface and underground waters. During the development of such plans, due regard was to be given to improvements necessary to conserve waters for public water supplies, propagation of fish and aquatic life, recreational purposes, and agricultural and industrial uses. The

original statute also authorized the Federal Works Administrator to assist states, municipalities, and interstate agencies in constructing treatment plants to prevent discharges of inadequately treated sewage and other wastes into interstate waters or tributaries.

Since 1948, the original statute has been amended extensively either to authorize additional water quality programs, standards and procedures to govern allowable discharges, funding for construction grants or general program funding. Amendments in other years provided for continued authority to conduct program activities or administrative changes to related activities.

C. Flood Control Act, 16 USC 460d et seq.

This act, as amended and supplemented by other flood control acts and river and harbor acts, authorizes various USACE water development projects. This statute expressed Congressional intent to limit the authorization and construction of navigation, flood control, and other water projects to those having significant benefits for navigation and which could be operated consistent with other river uses. The authority to construct, operate and maintain public park and recreational facilities in reservoir areas was also provided.

D. Floodplain Management, EO 11988, May 24, 1977

The purpose of this EO is to prevent agencies from contributing to the "adverse impacts associated with the occupancy and modification of floodplains" and the "direct or indirect support of floodplain development."

In the course of fulfilling their respective authorities, agencies "shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains."

Before proposing, conducting, supporting or allowing an action in a floodplain, each agency is to determine if planned activities will affect the floodplain and evaluate the potential effects of the intended actions on its functions. Agencies shall avoid siting development in a floodplain "to avoid adverse effects and incompatible development in the floodplains,"

E. Oil Pollution Act, 33 USC 2701 et seq.

This act established new requirements and extensively amended the federal Water Pollution Control Act to provide enhanced capabilities for oil spill response and natural resource damage assessment

Among other provisions are that federal trustees shall assess natural resource damages for natural resources under their trusteeship. Federal trustees may, upon request from a state or Indian tribe, assess damages to natural resources for them as well. Trustees shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of natural resources under their trusteeship.

F. Protection of Wetlands, EO 11990, May 24, 1977

Similar to Floodplain Management, agencies are directed to consider alternatives to avoid adverse effects and incompatible developments in areas of wetlands. New construction is to be avoided if possible.

G. Safe Drinking Water Act, 42 USC 300h

This act establishes a program to monitor and increase the safety of all commercially and publicly supplied drinking water. This act was amended in 1986 to require the EPA to establish MCLs, MCL Goals, and Best Available Technology treatment techniques for organic, inorganic, radioactive, and microbial contaminants, and turbidity. In 1996, current federal MCL Goals and Best Available Technology treatment techniques in public drinking water supplies were set.

H. Water Quality Act, PL 100–4

This act provided the most recent series of amendments to the federal Water Pollution Act. Provisions included:

- Requirement that states develop strategies for toxics cleanup in waters where the application of Best Available Technology discharge standards is not sufficient to meet state water quality standards and support public health,
- Increase in the penalties for violations of Section 404 permits, and
- Requirement that EPA study and monitor the water quality effects attributable to the impoundment of water by dams.

I. Water Resources Planning Act, 42 USC 1962a–1962(a)(4)(e)

This act established a Water Resources Council to be composed of Cabinet representatives, including the Secretary of the Interior. It also established River Basin Commissions and stipulated their duties and authorities.

The Council was empowered to maintain a continuing assessment of the adequacy of water supplies in each region of the United States. In addition, the Council was mandated to establish principles and standards for federal participants in the preparation of river basin plans and in evaluating federal water projects. Upon receipt of a river basin plan, the Council was required to review the plan with respect to agricultural, urban, energy, industrial, recreational and fish and wildlife needs.

J. Water Rights, 43 USC 666

This act waives the sovereign immunity of the U.S. where there is a suit designed to establish the rights to a river or other source of water, or the administration of such rights, and the U.S. appears to own or be in the process of acquiring rights to any such water. (The effect is to permit state courts to adjudicate federal water rights claims under state law.)

Wilderness

A. California Desert Protection Act, PL 103–433

This act designated lands in the BLM California Desert District as wilderness, established Death Valley and Joshua Tree National Parks, and established the Mojave National Preserve. Each designated wilderness area would be administered by BLM in accordance with the provisions of the Wilderness Act, except that any reference to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this title.

B. Wilderness Act, 16 USC 1131 et seq.

This act established a National Wilderness System of areas to be designated by Congress. It directed the Secretary of the Interior, within 10 years, to review every roadless area of 5,000 or more acres and every roadless island (regardless of size) within National Wildlife Refuge and National Park Systems and to recommend to the President the suitability of each such area or island for inclusion in the National Wilderness Preservation System, with final decisions made by Congress. The Secretary of Agriculture was directed to study and recommend suitable areas in the National Forest System.

The act provides criteria for determining suitability and establishes restrictions on activities that can be undertaken on a designated area. Criteria set by Congress within this act states that wilderness areas have the following characteristics: (1) Generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a

primitive and confined types of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological or other features of scientific, educational, scenic or historical value. The Wilderness Act also set the accepted uses of designated wilderness areas and what uses are prohibited. The act sets special provisions for an agency's continuing management of existing or grandfathered rights such as mining and grazing and other agency mission related activities.

Other

A. Federal Advisory Committee Act, PL 92–463

The Federal Advisory Committee Act (or FACA) is a federal law (PL 92-463, October 6, 1972) which governs the behavior of advisory committees. In particular it restricts the formation of such committees to only those which are deemed essential, limits their powers to provision of advice to officers and agencies in the executive branch of the federal government, and limits the length of term during which any such committee may operate. The FACA declared that all administrative procedures and hearings were to be public knowledge. Also see "sunshine clause" and "Administrative Procedure Act Section 553."

B. Federal Power Act, 16 USC 791–828c

Established what is now the Federal Energy Regulatory Commission. Studies water related power development possibilities. Licenses and oversees the development of water power project on federal and non-federal land. On federal land coordinates with agencies and, for some agencies they may dictate conditions to be included in licenses.

The Federal Energy Regulatory Commission also regulates interstate electric transmission lines and interstate oil and gas pipelines. Issues "certificates of public convenience" for these interstate facilities.

C. Federalism, EO 13132, August 4, 1999

In formulating and implementing policies that have federalism implications, agencies shall be guided by the following principles:

- Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.

- The people of the states created the national government and delegated to it enumerated governmental powers. All other sovereign powers, save those expressly prohibited the states by the Constitution, are reserved to the states or to the people.

- The Framers recognized that the states possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.

- The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several states according to their own conditions, needs, and desires. One-size-fits-all approaches to public policy problems can inhibit the creation of effective solutions to those problems.

- Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

- The national government should be deferential to the states when taking action that affects the policymaking discretion of the states and should act only with the greatest caution where state or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government.

D. Freedom of Information Act, PL 85–619

The Freedom of Information Act is the implementation of freedom of information legislation in the United States. The act explicitly applies only to federal government agencies. These agencies are under several mandates to comply with public solicitation of information. Along with making public and accessible all bureaucratic and technical procedures for applying for documents from that agency, agencies are also subject to penalties for hindering the process of a petition for information. However, there are nine exemptions, ranging from a withholding "specifically authorized under criteria established by an EO to be kept secret in the interest of national defense or foreign policy" and trade secrets to "clearly unwarranted invasion of personal privacy." In all cases, the President has unlimited power in declaring something off-limits or necessarily classified in the concern of national safety.

E. Land and Water Conservation Fund, 16 USC 460l–460l-11

This fund is derived from various types of revenue (primarily Outer Continental Shelf oil monies) and appropriations from the fund may be used for 1) matching grants to states for outdoor recreation projects and 2) land acquisition for various federal agencies.

F. Intergovernmental Review of Federal Programs, EO 12372

In order to foster an intergovernmental partnership and a strengthened federalism by relying on state and local processes, the provisions of EO 12372, July 14, 1982, provides that: 1) federal agencies shall provide opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for, or that would be directly affected by, proposed federal financial assistance or direct federal development, and 2) To the extent the states, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for state and local elected officials to review and coordinate proposed federal financial assistance and direct federal development.

G. Privacy Act of 1974, PL 93–579

The Privacy Act states in part, that no agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains. However, there are specific exceptions for the record allowing the use of personal records. These exceptions are as follows: (1) for statistical purposes by the Census Bureau and the Bureau of Labor Statistics, (2) for routine uses within a U.S. government agency, (3) for archival purposes "as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. government," (4) for law enforcement purposes, (5) for Congressional investigations, and (6) other administrative purposes. The Privacy Act mandates that each U.S. government agency have in place an administrative and physical security system to prevent the unauthorized release of personal records.

H. Regulatory Impact Analysis, EO 12866, September 30, 1993

Requires agencies to analyze the economic impact of proposed rules.

I. Takings, EO 12630, March 15, 1988

The Fifth Amendment of the U.S. Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use. Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions

that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

Agencies shall evaluate carefully the effect of their actions on constitutionally protected property rights to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate.

J. Actions to Expedite Energy-Related Projects, EO 13212

On May 18, 2001, the President signed EO 13212, "Actions to Expedite Energy-Related Projects," which states that "the increased production and transmission of energy in a safe and environmentally sound manner is essential" (*Federal Register*, Volume 66, page 28357, May 22, 2001). Executive departments and agencies are directed to "take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy." EO13212 further states that "For energy-related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation and where appropriate."

K. Federal Leadership Environmental, Energy, and Economic Performance, EO 13514

On October 5, 2009, the President signed E.O. 13514, "Federal Leadership in Environmental, Energy, and Economic Performance," which requires that federal agencies take efforts to align their policies to advance local planning efforts for energy development, including renewable energy (*Federal Register*, Volume 74, page 52117, Oct. 5, 2009). Specifically, the order states that agencies shall "advance regional and local integrated planning by . . . aligning federal policies to increase the effectiveness of local planning for energy choices such as locally generated renewable energy."